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BY HAND

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

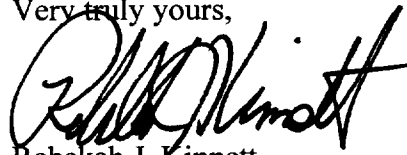
Re: **Ex Parte Presentation**  
**AT&T/TCI Merger Proceeding -- CS Docket No. 98-178**

Dear Ms. Salas:

On January 20, 1999, Jane Kunka of Qwest Communications Corporation, Earl Comstock of Sher & Blackwell, and Danny Adams of Kelley Drye & Warren LLP, counsel for Qwest, met with Kathryn C. Brown, FCC Chief of Staff. The discussion concerned Qwest's position regarding the AT&T/TCI merger as presented in Qwest's comments filed in CS Docket No. 98-178 on October 29, 1998. A copy of a letter provided to Ms. Brown at this meeting is appended hereto.

An original and one copy of this letter are being submitted in accordance with Section 1.1206 of the Commission's rules.

Very truly yours,

  
Rebekah J. Kinnett

cc: Kathryn Brown, Royce Dickens, ITS

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January 19, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable William E. Kennard, Chairman  
The Honorable Harold W. Furchtgott-Roth  
The Honorable Susan Ness  
The Honorable Michael K. Powell  
The Honorable Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20024

RE:   Advanced Services NOI       - CC Docket No. 98-146  
      Advanced Services NPRM     - CC Docket No. 98-147  
      AT&T/TCI Merger           - CS Docket No. 98-178

Dear Mr. Chairman and Commissioners:

Qwest welcomes the opportunity to address a number of issues pending before the Commission that will have a substantial impact on the state of competition in the U.S. telecommunications market. Specifically, Qwest is concerned that the proposed AT&T/TCI merger and the Commission's proposal to allow the Regional Bell Operating Companies (RBOCs) to offer advanced services through lightly regulated separate affiliates could have the harmful effect of increasing consumer prices and limiting consumer access to advanced services.

Qwest is a multimedia communications company that has nearly completed a nation-wide Internet Protocol based fiber optic network. Our OC-192 SONET network is the backbone for the Abilene "Internet II" next generation university network, and will carry information for our customers faster than any other network in the nation today. We are also building Web hosting centers at strategic locations throughout the country and we provide dial-up Internet access services, so that we can offer affordable access to our high-capacity networks and Internet services for customers big and small. In addition, Qwest is building a European network with KPN, a Dutch telecommunications company. To extend our reach even further, we are completing a network in Mexico, and we are partners in a fiber cable to the Pacific Rim.

Qwest is for competition, and I know the Commission shares that goal. Removal of barriers and opening the local monopoly to competition are fundamental goals of the Telecommunications Act. Competition in the 21<sup>st</sup> century will depend on access to the last mile. The continued explosive growth of a competitive Internet depends on unrestricted access directly to the consumer. There can be no gatekeepers and bottlenecks if consumers are to have a choice.

Today all Internet and information service providers (ISPs), as well as long distance backbone providers, can only reach consumers on a mass basis by connecting through the incumbent local exchange carrier (ILEC) – in most cases an RBOC. The ILEC must provide equal access to many other providers, and RBOCs are not permitted to provide certain services that other competitors may provide. As a result, no ILEC, RBOC or other provider can control the customer for all services using the local exchange bottleneck. However, two proposals before the Commission may seriously undermine competitive access and allow control of the consumer.

The Commission is reviewing the planned merger between AT&T and TCI which would effectively create the nation's only nationwide broadband network, covering more than half the nation's households at the outset – and creating a new, broadband Ma Bell. Through TCI's cable network and arrangements with Time Warner and other cable operators, AT&T will have direct access to the customer to offer a bundled package of local, long distance, Internet, and cable service.

AT&T has not disclosed the nature or extent of these "exclusive" agreements, and the Commission should require them to be filed for review. According to AT&T, other companies will have access to consumers served by the AT&T cable network and agreements only through AT&T. Competitors will only have indirect access to customers, at a higher price, on whatever terms AT&T demands. The world's largest and best known communications company – which has already been broken up once for antitrust abuses – will determine who gets broadband cable access. It will be exceedingly difficult to compete for long in such an environment. Residential and business customers will suffer.

The Commission is also considering a plan to permit the RBOCs – which are the product of the antitrust action to break up Ma Bell – to create separate affiliates through which they can shield xDSL and other network advancements from the requirements of section 251(c) of the Communications Act. Under the Commission's plan, only facilities based access – the most expensive of the three competitive entry strategies provided by Congress – will likely be available to competitors. To reach a mass market competitors will have to deploy facilities – before signing up a single customer – in each ILEC central office that serves those customers. The practical result of this is that the separate affiliate, like AT&T's cable operation, will act as the gatekeeper for most consumers, and in particular residential customers. Competitors will only have indirect access at a higher price, if they have access at all.



To prevent the creation of local duopolies between AT&T and the ILECs, the Commission should reject the AT&T-TCI merger application and reject the separate affiliate plan. A competitive market is emerging, and if you give it another year or two the results will astound you. Long distance competition didn't happen overnight, and local competition is even more difficult to achieve. Give the market a chance to work – make the ILECs comply with section 251(c) for all services. Likewise, do not let AT&T lock up local access through cable.

However, I understand that some of you may be inclined to approve the merger or separate affiliate approach. If that is the case, then you should at least ensure that competitors have direct access to the customer, over both AT&T's broadband cable loop and through the ILEC facilities.

You can ensure access to cable facilities by requiring open access as a condition of your approval of the merger, or through a generic proceeding as a follow-up to the Section 706 Notice of Inquiry. You can help ensure competition with an ILEC separate affiliate by requiring substantial public ownership, prohibiting resale of ILEC services by the affiliate under section 251(c)(4), and prohibiting joint marketing between the ILEC and its affiliate. These measures are crucial if you want competition for consumers in the 21<sup>st</sup> century.

All of you are working hard to ensure that competition for broadband services becomes a reality for American consumers. Help competitors open up the market, rather than assist those who want to create a duopoly.

Thank you for meeting with me today and considering these comments. I look forward to working with you on these and other issues in the future.

Sincerely,  
Original signed by  
JOSEPH P. NACCHIO  
President and Chief Executive Officer

